

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JAS SUPPLY, INC., a Florida corporation,

Plaintiff,

v.

RADIANT CUSTOMS SERVICES, INC., a
New York corporation, RADIANT GLOBAL
LOGISTICS, INC., a Washington corporation,

Defendant.

Case No. 2:21-cv-01015

DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

**NOTE ON MOTION CALENDAR:
SEPTEMBER 24, 2021**

ORAL ARGUMENT REQUESTED

I. INTRODUCTION AND RELIEF REQUESTED

Defendants Radiant Customs Services, Inc. ("Radiant Customs") and Radiant Global Logistics, Inc. ("Radiant Global") (collectively "Defendants") ask this Court to grant Defendants' motion for summary judgment to enforce the limitation on liability that JAS Supply, Inc. ("Plaintiff") and Radiant Customs agreed to, and dismiss all other claims with prejudice.

Plaintiff seeks to recover over \$750,000 from Defendants when Plaintiff is contractually limited to recovering \$200. Defendants bring this motion to avoid costly and unnecessary litigation and concurrently seek a stay of discovery while the court decides this motion. The court should grant this motion as related to Radiant Global because there is no contract between Plaintiff and Radiant Global and Radiant Global has no special relationship with Plaintiff.

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As to Radiant Customs and Plaintiff, there is no dispute that the parties entered into a contract and that contract has a limitation of liability clause limiting Plaintiff's claims to \$50.00 per entry. Plaintiff's claim is limited to \$200 under the parties' agreement. Black letter law establishes that Plaintiff cannot have a negligence claim when the conduct complained of is subject to a contract. The limitation of liability clause—standard language in similar contracts—must be upheld and the remainder of Plaintiff's claims must be dismissed.

II. FACTS

Radiant Global is a logistics and transportation services company. Declaration of Paul Kwiatkowski in Support of Defendants' Motion for Summary Judgment ("Kwiatkowski Decl.") at ¶ 2. Radiant Customs is a customs broker and ocean freight forwarder. Declaration of Maria Vitale in Support of Defendants' Motion for Summary Judgment (Vitale Decl.) ¶ 2. Radiant Customs and Radiant Global are distinct entities, with a shared parent company, Radiant Logistics Inc. *See* Kwiatkowski Decl. at ¶ 2. Plaintiff is a food products vendor that distributes to the correctional channel. Complaint, Dkt. No. 1, at ¶ 7.

According to Plaintiff's Complaint, at some point in the beginning of the COVID-19 pandemic, it attempted to pivot and import alcohol wipes to meet the new booming demand. *Id.* at ¶ 8. To that end, in May 2020, Plaintiff engaged the services of Radiant Customs to assist with the importation of alcohol wipes. *Id.* at ¶ 9; *see also* Vitale Decl. at ¶ 3. Upon engaging with Radiant Customs, Plaintiff signed a four-page Power of Attorney / Designation of Forwarding Agent that included Radiant Custom's Terms & Conditions (the "Contract"). *Id.* at ¶ 11; *see also* Vitale Decl. at Ex. A. The Contract outlined, among other details, the services to be performed by Radiant Customs (p. 1); Plaintiff's duties (e.g., p. 4, ¶ 6); the scope of Radiant Customs's agency relationship (pp. 1; 4, ¶ 2); and Disclaimers and the Limitation of Liability (p. 4, ¶ 9). Vitale Decl. at Ex. A.

The Contract provided that the terms and conditions "constitute a legally binding contract between the [Radiant Customs] and [JAS Supply]. In the event the Company renders

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services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other documents(s) shall govern those services.” *Id.* at p. 4.

A. Plaintiff’s Allegations

After entering into the Contract, Plaintiff and Radiant Customs worked together to import multiple containers of alcohol wipes. *See* Complaint, Dkt. #1 at ¶¶ 12–14. According to the Complaint,¹ four of these containers were detained by the Food and Drug Administration (“FDA”) because “the product manufacturer did not register with the FDA or list the wipes as a drug” as required by federal law. *Id.* at ¶ 18. This rejection, according to Plaintiff, led to a series of events in which Plaintiff’s wipes were ultimately denied entry to the United States and that denial has allegedly caused Plaintiff damages. *See id.* at ¶¶ 19–25.

B. Relevant Contractual Terms:

Portions of the Contract are instructive in the resolution of this Motion and this case. Specifically:

1. Definitions

(a) "Company" shall mean Radiant Customs Services, Inc. as well as its respective subsidiaries, related companies, agents and/or representatives;

(b) "Customer" shall mean the person for which the Company is rendering service, as well as its agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives

Vitale Decl. Ex. A, at p. 4 ¶ 1.

2. Company as agent.

The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export documentation on behalf of the

¹ For purposes of this motion, Plaintiff’s allegations are assumed to be true.

Customer and other dealings with Government Agencies: as to all other services, Company acts as an independent contractor
Id. at p. 4 ¶ 2.

9. Disclaimers; Limitation of Liability.

(a) Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services;

(b) Subject to (d) below, Customer agrees that in connection with any and all services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to Customer, including loss or damage to Customer's goods, and the Company shall in no event be liable for the acts of third parties;

...

(d) In the absence of additional coverage under (c) above, the Company's liability shall be limited to the following:

(i) where the claim arises from activities other than those relating to customs brokerage, \$50.00 per shipment or transaction, or

(ii) where the claim arises from activities relating to "Customs business," \$50.00 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less;

Id. at p. 4 ¶ 9.

C. Radiant Global Has No Connection to This Case

At no time did Radiant Global ever enter into a contract with Plaintiff related to the importation of these sanitation wipes or any other services relevant to Plaintiff's damages. Kwiatkowski Decl. at ¶ 3; *see also* Vitale Decl. Ex. A; *see also* Complaint at ¶ 1 (alleging contract with Radiant Global and/or Radiant Customs for customs broker services).

III. EVIDENCE RELIED UPON

Defendants rely upon the Declaration of Maria Vitale in Support of Defendants' Motion for Summary Judgment and exhibits thereto, the Declaration of Paul Kwiatkowski in Support of Defendants' Motion for Summary Judgment, as well as the documents and pleadings on file.

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1 **IV. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON**
 2 **ALL ISSUES PRESENTED**

3 **A. Standard Of Review**

4 Summary judgment is proper where there is no genuine issue of material fact and the
 5 moving party is entitled to judgment as a matter of law. FRCP 56(c). The court must grant
 6 summary judgment where the party bearing the burden of proof at trial fails to produce
 7 sufficient evidence supporting each and every element of its claim. *Celotex Corp. v. Catrett*,
 8 477 U.S. 317, 322, 106 S. Ct. 2548 (1986). A scintilla of evidence, or evidence that is merely
 9 colorable or not significantly probative, does not present a genuine issue of material fact.
 10 *United Steelworkers of America v. Phelps Dodge*, 865 F.2d 1539, 1542 (9th Cir. 1989). All
 11 inferences must be viewed in a light most favorable to the non-moving party. *T.W. Elec. Serv.*
 12 *Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987).

13 **B. Plaintiff has no sustainable claim against Radiant Global.**

14 As a preliminary matter, Defendant Radiant Global is entitled to summary judgment
 15 on all claims brought against it because it had no contract with Plaintiff, never owed a fiduciary
 16 duty to Plaintiff, and indeed owed no duty to Plaintiff related to the claims in this case.

17 In order for Plaintiff to sustain a claim against Radiant Global it must be able to prove
 18 that Radiant Global owed it a duty: either in contract or in law. To sustain a breach of contract
 19 claim, there must be a contract between the parties that imposed a duty upon the defendant,
 20 and the defendant must breach that duty. *Myers v. State*, 152 Wn. App. 823, 828, 218 P.3d 241
 21 (2009). Similarly, in a negligence claim, a party must be able to prove that the defendant owed
 22 it a duty—including a fiduciary duty—and prove that the duty was breached. *Meyers v.*
 23 *Ferndale Sch. Dist.*, 12 Wn. App. 2d 254, 260, 457 P.3d 483, *review granted*, 195 Wn.2d 1023,
 24 466 P.3d 769 (2020), *and aff’d but criticized*, 197 Wn.2d 281, 481 P.3d 1084 (2021).

25 Here, Plaintiff’s claims against Radiant Global fail at the most fundamental level as
 26 there was no contract between the two parties and Radiant Global did not participate in any of

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1 the acts or omissions that Plaintiff alleges caused its damages.

2 Plaintiff's Complaint alleges its claims against "Radiant," treating both Defendants as
 3 a singular entity. *See* Complaint, Dkt. # 1. However, the facts alleged against "Radiant" all
 4 pertain to alleged acts or omissions by Radiant Customs and relate to a contract between
 5 Plaintiff and Radiant Customs. *See e.g.* Complaint Dkt. #1, at ¶¶ 10 (quoting portions of
 6 Radiant Customs's website); 11 (referencing Contract sent by Radiant Customs); 12
 7 (referencing communications from Radiant Customs representative); 13 (referencing
 8 information sent back to Radiant Customs); 14–15 (quoting portions of Contract between
 9 Plaintiff and Radiant Customs). Radiant Global was never a party to the contract. Kwiatkowski
 10 Decl. at ¶ 3. Indeed, Radiant Global did not participate in any of the customs brokerage services
 11 alleged to be at issue here. *Id.* With no evidence to support a contract between Plaintiff and
 12 Radiant Global, or any facts to support any other relevant relationship, Plaintiff does not have
 13 any viable claim against Radiant Global as a defendant.

14 As there is no issue of material fact, and Radiant Global is an improper party to this
 15 suit, Plaintiff's claims against Radiant Global should be dismissed in their entirety.

16 C. **The Contract governs the relationship between Plaintiff and**
 17 **Radiant Customs and limits liability to \$200.**

18 There is no dispute that Radiant Customs and JAS Supply entered into a binding
 19 contract and that contract contains a limitation of liability clause. "In the absence of additional
 20 coverage . . . [Radiant Customs's] liability shall be limited to the following: (i) where the claim
 21 arises from activities other than those relating to customs brokerage, \$50.00 per shipment or
 22 transaction." Vitale Decl. at Ex. A, p. 4, ¶ 9.

23 All of Plaintiff's claims against Radiant Customs relate to alleged acts and omissions
 24 by Radiant Customs in the services it performed under the Contract. Indeed, Plaintiff has
 25 pleaded and relied on several portions of the Contract. Plaintiff cannot avoid the relevant
 26 portion of the contract which governs the outcome of this case.

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1 1. The limitation on liability is valid and can be enforced as a
 2 matter of law.

3 In Washington, liability limitations will be enforceable if they are not unconscionable.
 4 *See M.A. Mortenson Co. v. Timberline Software Corp.*, 140 Wn.2d 568, 585, 998 P.2d 305
 5 (2000). Whether a liability limitation is unconscionable is determined as a matter of law. *Puget*
 6 *Sound Fin. v. Unisearch*, 146 Wn.2d 428, 438, 47 P.3d 940 (2002). The burden of proving
 7 unconscionability of a contract clause is on the party attacking it—and in a contract between
 8 two commercial parties, that is a high bar. *See id.* JAS has not alleged unconscionability and
 9 cannot meet this substantial burden.²

10 All of Plaintiff's claims relate to Radiant Customs's performance of its custom
 11 brokerage duties—including, but not limited to, the acts necessary to facilitate the entry and
 12 clearing of the imports at issue. *Compare* Vitale Decl. Ex. A, with Complaint, Dkt. # 1 at ¶¶
 13 17–25. The Contract between the parties provides Plaintiff with an exclusive remedy for
 14 alleged breaches to brokerage duties and limits liability to \$50.00 per entry. Vitale Decl. Ex.
 15 A, p. 4 ¶ 9. As this term is not unconscionable, Radiant Customs is entitled to summary
 16 judgment and enforcement of the limitation on liability in the Contract.

17 **D. The Independent Duty Doctrine precludes Plaintiff's negligence**
 18 **and breach of fiduciary duty claims.**

19 Finally, Radiant Customs is entitled to summary judgment on any remaining claims

20 ² Indeed, limitation of liability clauses are routinely upheld under Washington law. *See e.g.*
 21 *Cypress Ins. Co. v. SK Hynix Am., Inc.*, 365 F. Supp. 3d 1142, 1156 (W.D. Wash. 2019)
 22 (following Washington law and upholding imitiation of liability provision that disclaimed
 23 liability for any incidental, consequential, punitive, special or exemplary damages); *O.B.*
 24 *Williams Co. v. S.A. Bendheim W., Inc.*, C08-1155JLR, 2010 WL 11526889, at *12 (W.D.
 25 Wash. July 13, 2010) (same); *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517
 26 (2009), as corrected (July 16, 2009) (upholding limitation on remedies in real estate
 contract); *Mortenson*, 140 Wn.2d at 585 (upholding limitation on liability in commercial
 contract); *see also Atwood Oceanics, Inc. v. Zust Bachmeier of Switzerland, Inc.*, CIV.A. H-
 04-4028, 2006 WL 734415, at *4 (S.D. Tex. Mar. 21, 2006) (upholding verbatim limitation
 on liability language in this contract in customs brokerage contract under Texas law).

1 because *all* of Plaintiff's allegations are covered by the Contract. Although Plaintiff has framed
 2 its Complaint as three separate causes of action—breach of contract, breach of fiduciary duty,
 3 and breach of negligence—all of the facts alleged by Plaintiff relate to the services performed
 4 by Radiant Customs under the terms of the Contract. As the only basis for Plaintiff's claims
 5 arise out of the contract, the noncontract claims must be dismissed.

6 As has been long established, the independent duty doctrine prohibits a plaintiff from
 7 seeking recovery in tort where the only duty alleged arises out of contract. *Eastwood v. Horse*
 8 *Harbor Fdn., Inc.*, 170 Wn.2d 380, 389 (2010) (“An injury is remediable in tort if it traces
 9 back to the breach of a tort duty arising independently of the terms of the contract.”) (citing
 10 *East River Steamship Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858 (1986)). That is
 11 exactly the situation here.

12 Formerly known as the “economic loss rule,” Washington’s “independent duty
 13 doctrine,” bars tort claims that arise out of the obligations that are covered by a contract
 14 between the parties. This is precisely what Plaintiff asserts here—a negligence and breach of
 15 fiduciary duty claim for Defendants’ alleged breaches of the Agreement. “The independent
 16 duty doctrine . . . bars recovery in tort for economic losses suffered by parties to a contract
 17 unless the breaching party *owed a duty in tort independent of the contract.*” *Pointe at*
 18 *Westport Harbor Homeowners’ Ass’n v. Eng’rs Nw., Inc.*, 193 Wn. App. 695, 702-703, 376
 19 P.3d 1158 (2016) (emphasis added); *Eastwood v. Horse Harbor Found., Inc.*, 170 Wn.2d 380,
 20 394, 241 P.3d 1256 (2010). “When no independent tort duty exists, tort does not provide a
 21 remedy.” *Eastwood*, 170 Wn.2d at 389. If the governing contract creates the sole relationship
 22 between the parties, one party cannot impose additional duties onto the parties that do not
 23 otherwise exist. *See e.g. Pac. Boring, Inc. v. Staheli Trenchless Consultants, Inc.*, 138 F. Supp.
 24 3d 1156, 1167 (W.D. Wash. 2015), *aff’d*, 708 Fed. Appx. 324 (9th Cir. 2017) (holding that
 25 Washington law does not impose a separate duty on professionals when the relationship
 26 between the parties is governed by contract). As the Washington State Supreme Court

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explained in *Affiliated FM Ins. Co. v. LTK Consulting Servs., Inc.*: “The law of contracts is designed to protect contracting parties' expectation interests and to provide incentives for ‘parties to negotiate toward the risk distribution that is desired or customary.’” 170 Wn.2d 442, 451–52, 243 P.3d 521 (2010) (quoting *Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1*, 124 Wn.2d 816, 827, 881 P.2d 986 (1994)). In contrast, tort law is a “superfluous and inapt tool” for resolving contract disputes. *Id.*

Plaintiff and Radiant Customs have no relationship outside of the contract. Plaintiff’s claims are based entirely upon actions related to the contract. Plaintiff’s fiduciary claims relate to Radiant Customs acting as an agent related to “the importer security filing services, the entry and release of goods, post entry services, and other dealings with Government Agencies.” *See* Complaint, Dkt. #1, at ¶ 33. Although Plaintiff contends these duties extend beyond the Contract, the entire scope of the agency relationship was defined within the Contract. Radiant Customs could not, and did not, act beyond the scope of their contractual relationship and the breach of fiduciary duty claim cannot survive as a matter of law.

Plaintiff’s negligence claims also must be dismissed under the independent duty doctrine. Plaintiff’s entire basis for a negligence claim is that Radiant Global “owed a duty to exercise reasonable care toward [Plaintiff] in providing customs broker and importation services.” *Id.* at ¶ 41. The only basis upon which Radiant Global owed a duty to provide customs broker and importation services was the Contract. Plaintiff has not alleged and cannot show, that Radiant Global, or Radiant Customs, owed it a duty of care that arose independently of the Contract. Accordingly, under the independent duty doctrine, Plaintiff’s tort claims herein fail as a matter of law. Those claims should be dismissed with prejudice.

V. CONCLUSION

Plaintiff entered into a Contract with Radiant Customs to facilitate the importation of goods. All of the claims alleged by Plaintiff fall within the terms of the Contract and are governed by the limitation on liability expressly agreed to in the Contract. Defendants are

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1 entitled to dismissal of all claims against Radiant Global, the tort based claims against Radiant
2 Customs, and enforcement of limitation on liability in the Contract.

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5 Dated this 31st day of August, 2021.

6 SCHWABE, WILLIAMSON & WYATT, P.C.

7
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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 31st day of August, 2021, I arranged for service of the foregoing DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION to the parties to this action by the Court's ECF system:

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